

106TH CONGRESS  
1ST SESSION

# H. R. 1987

To allow the recovery of attorneys' fees and costs by certain employers and labor organizations who are prevailing parties in proceedings brought against them by the National Labor Relations Board or by the Occupational Safety and Health Administration.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 27, 1999

Mr. GOODLING introduced the following bill; which was referred to the Committee on Education and the Workforce

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## A BILL

To allow the recovery of attorneys' fees and costs by certain employers and labor organizations who are prevailing parties in proceedings brought against them by the National Labor Relations Board or by the Occupational Safety and Health Administration.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the "Fair Access to Indem-  
5       nity and Reimbursement Act".

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 (a) FINDINGS.—The Congress makes the following  
3 findings:

4 (1) Certain small businesses and labor organi-  
5 zations are at a great disadvantage in terms of ex-  
6 pertise and resources when facing actions brought by  
7 the National Labor Relations Board or by the Occu-  
8 pational Safety and Health Administration.

9 (2) The attempt to “level the playing field” for  
10 small businesses and labor organizations by means  
11 of the Equal Access to Justice Act has proven ineff-  
12 ective and has been underutilized by these small en-  
13 tities in their actions before the National Labor Re-  
14 lations Board and before the Occupational Safety  
15 and Health Review Commission.

16 (3) The greater expertise and resources of the  
17 National Labor Relations Board and the Occupa-  
18 tional Safety and Health Administration as com-  
19 pared with those of small businesses and labor orga-  
20 nizations necessitate a standard that awards fees  
21 and costs to certain small entities when they prevail  
22 against the National Labor Relations Board or  
23 against the Occupational Safety and Health Admin-  
24 istration.

25 (b) PURPOSE.—It is the purpose of this Act—

1           (1) to ensure that certain small businesses and  
2       labor organizations will not be deterred from seeking  
3       review of, or defending against, actions brought  
4       against them by the National Labor Relations Board  
5       or by the Occupational Safety and Health Adminis-  
6       tration because of the expense involved in securing  
7       vindication of their rights;

8           (2) to reduce the disparity in resources and ex-  
9       pertise between certain small businesses and labor  
10      organizations and the National Labor Relations  
11      Board and the Occupational Safety and Health Ad-  
12      ministration; and

13          (3) to make the National Labor Relations  
14      Board and the Occupational Safety and Health Ad-  
15      ministration more accountable for their enforcement  
16      actions against certain small businesses and labor  
17      organizations by awarding fees and costs to these  
18      entities when they prevail against the National  
19      Labor Relations Board or in proceedings before the  
20      Occupational Safety and Health Review Commission.

21 **SEC. 3. AMENDMENT TO NATIONAL LABOR RELATIONS ACT.**

22       The National Labor Relations Act (29 U.S.C. 151  
23      and following) is amended by adding at the end the fol-  
24      lowing new section:

1           “AWARDS OF ATTORNEYS’ FEES AND COSTS

2           “SEC. 20. (a) ADMINISTRATIVE PROCEEDINGS.—An  
3 employer who, or labor organization that—

4           “(1) is the prevailing party in an adversary ad-  
5 judication conducted by the Board under this or any  
6 other Act; and

7           “(2) had not more than 100 employees and a  
8 net worth of not more than \$7,000,000 at the time  
9 the adversary adjudication was initiated,  
10 shall be awarded fees and other expenses as a prevailing  
11 party under section 504 of title 5, United States Code,  
12 in accordance with the provisions of that section, but with-  
13 out regard to whether the position of the Board was sub-  
14 stantially justified or special circumstances make an  
15 award unjust. For purposes of this subsection, the term  
16 ‘adversary adjudication’ has the meaning given that term  
17 in section 504(b)(1)(C) of title 5, United States Code.

18          “(b) COURT PROCEEDINGS.—An employer who, or a  
19 labor organization that—

20          “(1) is the prevailing party in a civil action, in-  
21 cluding proceedings for judicial review of agency ac-  
22 tion by the Board, brought by or against the Board,  
23 and

1           “(2) had not more than 100 employees and a  
2           net worth of not more than \$7,000,000 at the time  
3           the civil action was filed,  
4           shall be awarded fees and other expenses as a prevailing  
5           party under section 2412(d) of title 28, United States  
6           Code, in accordance with the provisions of that section,  
7           but without regard to whether the position of the United  
8           States was substantially justified or special circumstances  
9           make an award unjust. Any appeal of a determination of  
10          fees pursuant to subsection (a) or this subsection shall be  
11          determined without regard to whether the position of the  
12          United States was substantially justified or special cir-  
13          cumstances make an award unjust.”.

14   **SEC. 4. APPLICABILITY OF NLRA AMENDMENT.**

15          (a) AGENCY PROCEEDINGS.—Subsection (a) of sec-  
16          tion 20 of the National Labor Relations Act, as added by  
17          section 3 of this Act, applies to agency proceedings com-  
18          menced on or after the date of the enactment of this Act.

19          (b) COURT PROCEEDINGS.—Subsection (b) of section  
20          20 of the National Labor Relations Act, as added by sec-  
21          tion 3 of this Act, applies to civil actions commenced on  
22          or after the date of the enactment of this Act.

1 **SEC. 5. AMENDMENT TO OCCUPATIONAL SAFETY AND**  
 2 **HEALTH ACT.**

3 The Occupational Safety and Health Act (29 U.S.C.  
 4 651 and following) is amended by inserting after section  
 5 12 at the end the following new section:

6 “AWARDS OF ATTORNEYS’ FEES AND COSTS

7 “SEC. 12A. (a) ADMINISTRATIVE PROCEEDINGS.—

8 An employer who—

9 “(1) is the prevailing party in an adversary ad-  
 10 judication before the Occupational Safety and  
 11 Health Review Commission under this or any other  
 12 Act, and

13 “(2) had not more than 100 employees and a  
 14 net worth of not more than \$7,000,000 at the time  
 15 the adversary adjudication was initiated,

16 shall be awarded fees and other expenses as a prevailing  
 17 party under section 504 of title 5, United States Code,  
 18 in accordance with the provisions of that section, but with-  
 19 out regard to whether the position of the Secretary of  
 20 Labor was substantially justified or special circumstances  
 21 make an award unjust. For purposes of this subsection,  
 22 the term ‘adversary adjudication’ has the meaning given  
 23 that term in section 504(b)(1)(C) of title 5, United States  
 24 Code.

25 “(b) COURT PROCEEDINGS.—An employer who—

1           “(1) is the prevailing party in a civil action, in-  
2           cluding proceedings for judicial review of an action  
3           by the Occupational Safety and Health Review Com-  
4           mission, brought by or against the Secretary or the  
5           Commission, and

6           “(2) had not more than 100 employees and a  
7           net worth of not more than \$7,000,000 at the time  
8           the civil action was filed,

9           shall be awarded fees and other expenses as a prevailing  
10          party under section 2412(d) of title 28, United States  
11          Code, in accordance with the provisions of that section,  
12          but without regard to whether the position of the United  
13          States was substantially justified or special circumstances  
14          make an award unjust. Any appeal of a determination of  
15          fees pursuant to subsection (a) or this subsection shall be  
16          determined without regard to whether the position of the  
17          United States was substantially justified or special cir-  
18          cumstances make an award unjust.”.

19       **SEC. 6. APPLICABILITY OF OSHA AMENDMENT.**

20           (a) AGENCY PROCEEDINGS.—Subsection (a) of sec-  
21          tion 12A of the Occupational Safety and Health Act, as  
22          added by section 5 of this Act, applies to agency pro-  
23          ceedings commenced on or after the date of the enactment  
24          of this Act.

1       (b) COURT PROCEEDINGS.—Subsection (b) of section  
2 12A of the Occupational Safety and Health Act, as added  
3 by section 5 of this Act, applies to civil actions commenced  
4 on or after the date of the enactment of this Act.

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